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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ANGELA FELDMANN,

11 Plaintiff,

12 v.

13 LAKEVIEW LOAN SERVICING
14 LLC, and LOANCARE, LLC,

15 Defendants.

CASE NO. C20-580 MJP

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
RECONSIDERATION

16 This matter comes before the Court on Defendant's Motion for Partial Reconsideration of
17 Order on Summary Judgment (Dkt. No. 24). (Dkt. No. 25.) Having reviewed the Motion,
18 Plaintiff's Opposition (Dkt. No. 31), and the relevant portions of the record, the Court GRANTS
19 in part and DENIES in part the Motion.

20 Motions for reconsideration are disfavored. See Local Rule 7(h)(1). "The court will
21 ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or
22 a showing of new facts or legal authority which could not have been brought to its attention
23 earlier with reasonable diligence." Id.
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1 Defendants Lakeview Loan Servicing LLC and LoanCare, LLC request the Court
2 reconsider its order on summary judgment as to: (1) Plaintiff's CPA claim, and (2) Defendants'
3 request for attorneys' fees. The Court remains unconvinced of any manifest error regarding the
4 CPA claim, but reconsiders its decision as to attorneys' fees.

5 First, Defendants ask for summary judgment on Plaintiff's CPA claim on the theory that
6 she has not shown evidence of damages. Defendants failed to raise this argument in their Motion
7 for Summary Judgment, arguing instead that the CPA did not apply to the conduct at issue. (Dkt.
8 No. 16 at 9-11.) Defendants only raised the issue of damages for the first time on reply. (Dkt.
9 No. 23 at 5.) A district court "need not consider arguments raised for the first time in a reply
10 brief." Zamani v. Carnes, 491 F.3d 990, 997 (9th Cir. 2007) (affirming district court's denial of
11 motion for reconsideration where argument was presented for the first time upon reply). And a
12 party may not seek reconsideration "to raise arguments or present evidence for the first time
13 when they could reasonably have been raised earlier in the litigation." See Carroll v. Nakatini,
14 342 F.3d 934, 945 (9th Cir. 2003). Even if the Court considered this belated argument, it finds no
15 basis for reconsideration. Defendants are correct that emotional distress is not compensable
16 under the CPA. See Frias v. Asset Foreclosure Servs., Inc., 181 Wn.2d 412, 432 (2014). But
17 Plaintiff has provided sufficient evidence of various damages, including credit-related damages
18 that make summary judgment improper.

19 Second, Defendants ask for reconsideration of the Court's order denying their request for
20 attorneys' fees related to Plaintiff's breach of contract claim. The Court previously rejected
21 Defendants' request for fees, noting that:

22 fees are mandatory only when "[t]he contract containing the attorney fees provision [is]
23 central to the controversy." CHD, Inc. v. Boyles, 138 Wn. App. 131, 141, (2007) (citing
24 Hemenway v. Miller, 116 Wn.2d 725, 742 (1991)). Because Plaintiff's complaint is primarily
focused on the statutory violations, and her breach of contract claim concerns the modified
contract, it cannot be said that the original contract is central to the controversy here.

1 (Order on Summary Judgment at 12 (Dkt. No. 24).) The Court reconsiders this decision. First,
2 Defendants correctly cite to authority that the attorneys' fee provision is still enforceable even
3 though the contract claim was one of many that Plaintiff brought. (Mot. at 3 (citing Tradewell
4 Grp., Inc. v. Mavis, 71 Wn. App. 120, 129–30, 857 P.2d 1053, 1058–59 (1993).); see also
5 Marassi v. Lau, 71 Wn. App. 912, 917 (1993), abrogated on other grounds by Wachovia SBA
6 Lending, Inc. v. Kraft, 165 Wn.2d 481, 490–92 (2009). The contract provision remains
7 applicable even though Plaintiff pursues other claims. Second, Defendants correctly note that the
8 loan modification agreement on which Plaintiff sued incorporated the covenants of the original
9 loan agreement, including the attorneys' fee provisions. That provision entitles Defendants to
10 attorneys' fees and costs "in any action or proceeding to construe or enforce any term of this
11 Security Instrument." (Bielby Decl. Ex. A ¶ 28.) Here, Plaintiff's action sought to enforce the
12 terms of the loan modification agreement, which is subject to the attorneys' fee covenant in the
13 original loan contract. Because Defendants prevailed on the breach of contract claim, they are
14 entitled to attorneys' fees as set out in the original contract. See RCW 4.84.330; Tradewell, 71
15 Wn. App. 129–30; Marassi, 71 Wn. App. at 917. Plaintiff identifies no contrary authority on this
16 issue. She instead cites to two cases where the court refused to enforce contractual provisions as
17 unconscionable against plaintiffs who sought to vindicate statutory rights, but who did not pursue
18 contract claims. (Pl. Opp. at 4 (Dkt. No. 31) (citing Gandee v. LDL Freedom Enters., Inc., 176
19 Wn.2d 598, 293 P. 3d 1197, 1201 (2013); Adler v. Fred Lind Manor, 153 Wn.2d 331, 103 P. 3d
20 773, 786 (2004)). These cases have no bearing here because Plaintiff specifically brought a
21 breach of contract claim, which put at issue the fee provision. The Court therefore reconsiders its
22 prior order on this limited issue and finds that Defendants are entitled to reasonable attorneys'
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1 fees and costs related to their defense against the breach of contract claim in an amount to be
2 determined by the Court upon resolution of this case after trial.

3 The clerk is ordered to provide copies of this order to all counsel.

4 Dated May 21, 2021.

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6 Marsha J. Pechman
7 United States Senior District Judge
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